

Remarks

The Office Action mailed February 23, 2005 has been reviewed and carefully considered. Claims 14 and 15 have been amended. No new matter has been added. Claims 1-24 are pending in the present application of which claims 1, 12 and 22 are the independent claims. Reconsideration of the outstanding rejections in view of the amendments to the claims and remarks presented herein is respectfully requested.

On an informal note, the Examiner objected to the Abstract as exceeding 150 words in length. Applicant has amended the Abstract so that it now falls within the acceptable length. No new matter has been added. Withdrawal of the objection in view of the amendment to the Abstract is requested.

Claims 14 and 15 are rejected under 35 U.S.C. §112, second paragraph, as failing to provide proper antecedent basis for the term "releasable securing device". Applicant has amended claims 14 and 15 accordingly to substitute the term "zipper chain" for the term "releasable securing device". Proper antecedent basis for the term "zipper chain" is found in base claim 12. Applicant requests that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn in view of the amendment to claims 14 and 15.

Claims 1-9, 11-19 and 21-24 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,154,332 (Williams et al.). Claims 1-24 are rejected under 35 U.S.C. §103(a) as obvious over Williams et al.

Applicant respectfully traverses the Examiner's rejection of all the claims as anticipated by or obvious over Williams et al. As indicated in the preamble of each claim, the invention is directed to "a backpack" while the body of the claims specify the elements or features of the backpack. The Examiner in his rejection of the claimed invention states:

"Williams teaches an enclosure for back carried-equipment that includes a front panel (26), a back panel (28), two side panels (34a and 34b), a top panel (32) and a bottom panel (30) that form a main compartment (16). Williams discloses a releasable securing device, which in the preferred embodiment is a zipper (14c), for accessing the

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main compartment with a terminating end disposed on the back panel and the beginning end on the front pane [sic]. The zipper of the Williams device is oriented longitudinally when the backpack is held upright and terminates at the shoulder straps (52) where the end of the zipper would rest against a wearer's body when worn." (Page 3 of the February 23, 2005 Office Action)

Applicant respectfully traverses the Examiner's rejection of the claims as anticipated by the prior art. Williams et al. is directed to an enclosure for back-carried equipment. In rejecting the present claimed backpack invention the Examiner improperly refers to the fabric enclosure 16 and the features associated therewith. However, the fabric enclosure 16 is a shielding encasement separate from and not a part of the backpack 58, thus the Examiner has failed to set forth a *prima facie* case of anticipation of the present claimed backpack. Specifically, the Williams et al. patent discloses a conventional backpack 58 (as shown in phantom in Figure 4) encased in and thus shielded from the environment by the patented fabric enclosure 16 which is separate from and not a part of the backpack. The backpack 58 is placed inside the fabric enclosure 16. When the zippers 14a, 14b are unzipped the flap of material 42 is rolled up whereby shoulder straps 52 of the backpack may extend or protrude through the opening in the fabric enclosure 16 so that the backpack may be worn with the enclosure. Since the fabric enclosure 16 is separate from and does not form a part of the backpack itself it is improper for the Examiner to rely on its features in rejecting the present claimed invention which is limited to the backpack itself. Williams et al. fails to disclose or suggest that backpack 58 has the claimed features of the present invention, i.e., a releasable securing device/zipper chain for accessing the main compartment, wherein the terminating end is disposed on the back panel and the beginning end is disposed on the second panel, as found in claims 1 and 12. With respect to claim 22, Williams et al. fails to disclose or suggest that backpack 58 has "a releasable securing device for accessing the main compartment, the releasable securing device extending along at least two of the plural panels".

Furthermore, the term "backpack" in the preamble of each claim must be accorded patentable weight. MPEP 2111.02 entitled "Effect of Preamble" sets forth the criteria and conditions by which the preamble limits the scope of the claim. As

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espoused by the Federal Circuit, the applicable test provides "If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999). Thereafter, the same MPEP section refers to an early decision by the Court of Customs and Patent Appeals in which the test was applied.

"Kropa v. Robie, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951) (A preamble reciting 'An abrasive article' was deemed essential to point out the invention defined by claims to an article comprising abrasive grains and a hardened binder and the process of making it. The court stated 'it is only by that phrase that it can be known that the subject matter defined by the claims is comprised as an abrasive article. Every union of substances capable *inter alia* of use as abrasive grains and a binder is not an 'abrasive article.'" Therefore, the preamble served to further define the structure of the article produced.)."

The same principles established in *Kropa v. Robie* are equally applicable in the present application in which the term "backpack" is essential to point out the invention defined by the claims. It is only by the use of the term that the subject matter defined by the claims is comprised as a "backpack". Every enclosure having panels and a main compartment is not a "backpack". Therefore, the preamble serves to define the structure of the article produced. It is the backpack that includes "at least two panels" and "a releasable securing device", as claimed. Accordingly, it is improper for the Examiner to have ignored such limitation and relied upon features of the fabric enclosure that is separate from and not a part of the backpack, as taught by the Williams et al. patent, to read on the present claimed invention. Accordingly, applicant submits that all the claims are patentable over the art of record and submits that the claim rejections under 35 U.S.C. §102(b) and §103(a) be withdrawn.

Moreover dependent claim 9 further calls for the releasable securing device "to be disposed substantially laterally, when the backpack is held substantially upright". The Examiner in rejecting claim 9 as anticipated by the prior art states "The top panel of the Williams device could be considered the bottom or side panel depending on the

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orientation of the device. For example, in Figures 7 and 8 disclosed by Williams, it is shown that the releasable securing devices and panels of the enclosure can take a variety of orientations while remaining within the scope and spirit of the disclosure." (Page 3 of February 23, 2005 Office Action) Applicant submits that Figures 7 and 8 disclose alternative embodiments for a cylindrical shaped fabric enclosure 16 and a longitudinal V arrangement of the zippers, respectively, but fail to teach or suggest the orientation of the zippers substantially laterally when the backpack 58 is held substantially upright, as found in claim 9. To the contrary, both embodiments show the zippers oriented in a longitudinal orientation when the backpack 58 is held substantially upright (as shown).

Furthermore, applicant disagrees with the Examiner's statement that "the top panel of the Williams device could be considered the bottom or side panel depending on the orientation of the device". The backpack 58 as shown in the figures is in an upright position. It is the backpack 58 disposed within the fabric enclosure 16 that determines the orientation of the fabric enclosure itself as a result of the overall rectangular shape of the backpack and the positioning of its shoulder straps 52 that must be able to pass through the opening of the fabric enclosure 16 when the flap is rolled up. Since the claim calls for the backpack to be in a substantially upright position, the only orientations of the fabric enclosure 16 is that either as shown in the Figures or rotated by 180 degrees in a vertical direction (in order to maintain the opening arranged to accommodate the shoulder straps of the backpack). In order for the top panel of the fabric enclosure to be considered the side panel the fabric enclosure 16 would have to be rotated 90 degrees relative to the backpack 58. The reference teaches away from such modification since the fabric enclosure 16 would not be able to cover the rectangular shaped backpack nor would the opening be properly aligned to permit the unobstructed passage of the shoulder straps therethrough so that the backpack may be worn with the enclosure.

In the outstanding Office Action, the Examiner also asserts that "Williams further discloses, 'a closure device could be configured in a T orientation' (column 5, line 22) which would position a releasable securing device laterally where it would extend across a portion of the side panel." The patent fails to disclose or suggest that the

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lateral section of the T would extend beyond the back panel and thus fails to read on the limitation provided in the base claim that calls for the releasable securing device having a terminating end disposed on the back panel and a beginning end disposed on a second panel. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Without express or implied teaching the reference fails to anticipate the claimed invention calling for the releasable securing device to have a terminating end disposed on the back panel, a beginning end disposed on a second panel, and the releasable securing device being disposed substantially laterally when the backpack is held substantially upright.

Returning again to the outstanding Office Action, the Examiner further maintains that "a second set of straps (18) are disposed laterally, which, when carried in this orientation, would cause the releasable securing device to extend across at least a portion of the side panel." Handle straps 18, referred to by the Examiner, are mounted to the fabric enclosure 16 and extend laterally across the back panel of the backpack 58. However, the handle straps 18 are not analogous to the claimed releasable securing device "for accessing the main compartment" of the backpack (as called for in the base claim), but instead the handle straps 18 when released allow passage into the interior of the fabric enclosure.

Dependent claim 19 contains similar language to that found in claim 9 and thus, is distinguishable over the prior art for at least the same reasons expressed above with respect to claim 9. Moreover, claim 19 is further distinguishable over Williams in that it expressly calls for "the zipper chain" to be "disposed substantially laterally, when the backpack is held substantially upright". The handle straps 18 of Williams are not analogous to the claimed zipper chain. Accordingly, applicant submits that claims 9 and 19 are patentable over the prior art of record and requests that the rejection of these claims as anticipated by Williams et al. be withdrawn.

Dependent claim 11 is also distinguishable over Williams et al. in that it calls for the releasable securing device to be "adapted to extend sufficiently along the back panel of the backpack so that the terminating end rests against a wearer's body when

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worn." In rejecting claim 11, the Examiner states "The zipper of the Williams device is oriented longitudinally when the backpack is held upright and terminates at the shoulder straps (52) where the end of the zipper would rest against a wearer's body when worn." (Page 3 of February 23, 2005 Office Action)(emphasis added) Applicant respectfully disagrees with the Examiner's assertion that the terminating end of the zipper 14c would rest against the wearer's body when worn, as found in claim 11. Williams expressly discloses that "Third zipper 14c originates on front panel 26, travels over top panel 32, and terminates between but just above termination point 38 of zippers 14a and 14b on back panel 28." (Col. 3, ll. 48-51 and Figure 3a)(emphasis added) As is shown in Figure 4, shoulder straps 52 must be able to pass fully unobstructed through the opening in the fabric enclosure 16 when zippers 14a and 14b are unzipped and flap 42 is rolled back so that the backpack may be worn with the enclosure. Accordingly, the terminating point of zippers 14a and 14b must be above where the shoulder straps 52 are mounted to the backpack 58 to allow them to pass fully unobstructed therethrough. As previously mentioned the specification expressly states that the terminating point of zipper 14c is above the terminating points of zippers 14a, 14b. Therefore, the terminating end of none of the zippers will be below where the shoulder straps 52 are mounted to the backpack 58. In order for the terminating end of the zipper 14c to rest against the wearer when worn it would have to be disposed below the position at which the shoulder straps are mounted to the back panel, which is not the case in the Williams patent. It is inconceivable how the terminating end of any of the zippers, much less zipper 14c (that is above zippers 14a, 14b), could rest against the wearer's body when worn since the terminating end of each of the zippers is disposed above the location at which the shoulder straps 52 are mounted to the backpack 58. Claim 21 is similar to that of dependent claim 11, but calls for a "zipper chain" rather than "a releasable securing device". Accordingly, claim 21 is patentable over the art of record for at least the same reasons expressed above with respect to claim 11.

Claims 10 and 20 are rejected by the Examiner as obvious over Williams. Specifically, claims 10 and 20 call for the terminating end of the releasable securing device/zipper chain to be disposed on the back panel of the backpack and that the releasable securing device/zipper chain extend at least substantially halfway along the

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back panel of the backpack when the backpack is held substantially upright. The Examiner in his rejection states "As disclosed in column 5, line 54 'modifications of the present invention are contemplated and can be resorted to by those skilled in the art, without departing from the spirit and scope of the invention.' Williams discloses many different embodiments and orientations for the releasable securing devices and the enclosure, therefore, it would have been obvious to one skilled in the art at the time of invention to change the length or orientation of the releasable securing devices while remaining within the scope and spirit of the Williams enclosure. As shown by Figure 8 disclosed by Williams, the releasable securing devices can have a length spanning from just a portion of the back panel to a majority of the back panel and it would be obvious to have the length of the releasable securing device extend at least substantially halfway along the back panel." (Page 4 of the February 23, 2005 Office Action)

The Examiner's initial assertion and reference to the broad language in the prior art reference contemplating additional modifications fails to expressly teach the claimed limitation as found in claims 10 and 20. Addressing the Examiner's last sentence quoted above, applicant respectfully submits that the Examiner is incorrect in his assertion that Figure 8 of Williams et al. teaches the terminating point of the zipper chain being disposed at least substantially halfway along the back panel. Figure 8 of the Williams reference teaches the terminating point of the V arranged zippers disposed on the top panel 32 of the fabric enclosure 16, rather than on the back panel, as expressly called for in base claims 1 and 12 from which claims 10 and 20, respectively, depend. Accordingly, applicant maintains that Williams fails to disclose a backpack in which the releasable securing device/zipper chain has a terminating end disposed on the back panel, a beginning end disposed on a second panel, and that the releasable securing device/zipper chain extends at least substantially halfway along the back panel of the backpack when the backpack is held substantially upright.

Moreover, Williams et al. teaches away from modifying the fabric enclosure 16 so that the terminating end of the zipper disposed on the back panel extends at least substantially halfway down the back panel when the backpack is in an upright position. MPEP section 2143 state "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or

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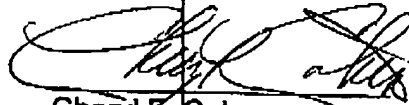
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motivation to make the proposed modification." (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)). The expressed intended purpose or function of the zippers 14a and 14b are so that when unzipped and the flap is rolled up the shoulder straps of the backpack disposed inside the fabric enclosure 16 may pass therethrough and be worn by the user while the backpack is shielded by the enclosure. (Col. 2, ll. 10-15) Assuming, *arguendo*, that the terminating end of zipper 14c were modified so as to be disposed substantially halfway down the back panel when the backpack is disposed in an upright position, then the terminating ends of the other two zippers 14a, 14b would also have to be proximate to that of zipper 14c to ensure that a common padlock can interconnect the tabs of the zippers. (Col. 2, ll. 1-5) If the terminating ends of the zippers 14a and 14b are disposed substantially halfway down the back panel of the backpack then when in an unzipped state the flap would not provide sufficient clearance for the shoulder straps in their entirety to pass unobstructed therethrough and be worn, thereby teaching away from the intended purpose of the invention. Absent a motivation or suggestion for such modification, the Examiner has failed to set forth a *prima facie* case of obviousness.

For the foregoing reasons applicant submits that claims 1-24 are patentable over the prior art of record and passage of this application to issuance is requested. No additional fees or charges are required in connection with this matter.

Respectfully submitted,



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